SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 376

GEORGE K. FISHER,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR REHEARING

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The petitioner respectfully petitions the Court for a rehearing in this cause for the reason of an intervening circumstance of substantial effect. (*People* v. *Smith*, decided by the Illinois Supreme Court on September 29, 1967) as noted in the October 11, 1967 supplement of the *Criminal Law Reporter* published by the Bureau of National Affairs, Inc.

While recognizing that the decisions of the Supreme Court of Illinois are not binding upon this Court, the petitioner respectfully urges that the Supreme Court of Illinois has recognized and given relief to the defendant in the Illinois case which is analogous to the injury of which the petitioner complains.

In the above referred to case, the Court held that evidence that an auto theft defendant was a narcotic addict and on the day of his arrest was under the influence of narcotics may not be introduced at his trial for the purpose of attacking his credibility.

> "The question that the parties present for decision is whether or not the credibility of a defendant on trial for an offense unrelated to narcotics may be impeached on the ground that he is addicted to narcotics, or has used them at a relevant time. * * * This court considered, as a question of first impression, 'whether or not an accomplice witness can be properly cross-examined as to the witness's drug addiction for the purpose of impeaching the witness's credibility.' The crime was murder and the jury had imposed the death penalty. The witness summary of our decisions shows that we have held: (1) *in a prosecution for an offense not connected with narcotics, evidence is admissible to show that an accomplice who testifies for the prosecution is addicted to narcotics or had used them on the day of the offense* (Emphasis supplied); (2) in a prosecution for a narcotics offense, evidence of narcotics use or addiction on the part of an informer is admissible; (3) evidence of a defendant's use of or addiction to narcotics is admissible in a narcotics prosecution, particularly if the defendant's past experience with narcotics has been placed in issue by his testimony on direct examination; (4) *evidence of a defendant's use of or addiction to narcotics is inadmissible in a prosecution for an offense that does not involve narcotics.*" * * * (Emphasis supplied). *People* v. *Smith*, supra.

The petitioner respectfully submits that he was prejudicially damaged by the improper innuendo as much as the defendant in the Illinois case.

Petitioner further contends that the United States Attorney in the trial of this case was asking a groundless

question to waft an unwarranted innuendo into the jury box and that the trial judge should not have permitted the defendant's reputation to have been so improperly damaged. *Michelson v. United States*, 69 S.Ct. 213.

Therefore, the petitioner respectfully submits that a reconsideration of the case in the light of the above stated authority, the Court may well find that the actions of the prosecuting attorney in the trial of the case was of sufficient gravity to justify a granting of the Writ of Certiorari.

Respectfully submitted,

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FRED ELLEDGE, JR.

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DALE QUILLEN

Attorneys for Petitioner

CERTIFICATE

We, FRED ELLEDGE, JR., and DALE QUILLEN, attorneys for the petitioner, hereby certify that the foregoing petition to rehear is submitted in good faith to raise what we believe to be valid and pertinent questions of law and not for the purposes of delay.

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FRED ELLEDGE, JR.

.....

DALE QUILLEN

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served upon counsel for all parties at interest in this cause by delivering a true and exact copy of said pleading to the offices of said counsel or by placing a true and exact copy of said pleading in the United States Mail, addressed to said counsel at his office, with sufficient postage thereupon to carry the same to its destination.

This the ..... day of ....., 19.....

DALE QUILLEN
Attorney at Law

By .....